IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIKRAMBHAI SHANKARLAL PATEL

Versus

AHMEDABAD ELECTRICITY COMPANY LTD

Appearance:

1. Special Civil Application No. 2 of 1997

MR BM MANGUKIYA for Petitioner No. 1

MR KB PUJARA for Respondent No. 1

MR HB SHAH for Respondent No. 2

MR SURESH M SHAH for Respondent No. 3

MR MEHUL S SHAH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 04/05/2004

ORAL JUDGEMENT

1. The petitioner preferred this petition under Article 226 of the Constitution of India and thereby challenged the communication issued by respondent no. 1 dated 6.11.1996 which is at Annexure-F to the memo of petition. The said communication issued by the AEC to the petitioner is to the effect that the petitioner has misrepresented certain facts and on the basis of those facts, the petitioner has obtained the electric connection, therefore, within seven days, the petitioner has to prove the ownership of the premises at which he has obtained electric connection. Being aggrieved by the said communication, the petitioner has preferred this writ petition.

2. It is contended by the ld. counsel for the petitioner that the respondent-AEC has no power, jurisdiction and authority to issue such type of communication. The proof of ownership is the subject matter of litigation. Initially, the petitioner was allotted plot No. 33/C at Shiv Sankalp Co-operative Housing Society Ltd. The said allotment letter is at Annexure-A to the memo of petition. Subsequently, because of delay on the part of the society in construction, a Lavad Suit bearing No. 1242/1981 was preferred by the petitioner before the Board of Nominees of Registrar. The same was unfortunately dismissed for default. Another Lavad Suit bearing No. 1499/90 was preferred but the same was also dismissed for default. Subsequently, the society passed a resolution cancelling the allotment of the house No. 33/C of the petitioner vide resolution dated 24.9.1995 (Annexure - I to the memo of Affidavit-in-reply). The said cancellation was due to non-payment of certain amount by the petitioner to the society. It is also contended by the petitioner that the payment was made and as there was delay in construction, some of the amount was tendered at a belated stage.

3. The petitioner submits that an appeal was preferred under sec. 36 of the Gujarat Cooperative Societies Act before the District Registrar by the petitioner. The said appeal was allowed and the resolution of the society was set aside by order dated 23.10.1997 (The said order is at page 74). Against the aforesaid order, an appeal was preferred by the society before the Registrar (Appeals), who allowed the appeal of the society vide order dated 1.7.1999 and thus, the resolution passed by the society was held valid one (The said order is at page 78).

4. Against the aforesaid order, it is submitted by

the ld. counsel for the petitioner that the petitioner preferred a revision application before the State of Gujarat and petitioner's revision application was allowed vide order dated 18.8.2000 (The said order is at page 84). Thus, the resolution passed by the society was set aside. The membership of the petitioner was cancelled by the society vide resolution dated 24.9.1995, was thus, set aside, by an effect of, a revisional order passed by the State of Gujarat. Against the revisional order, the society preferred a writ petition being SCA No. 10755/2000 and the same is pending before this Court. The said writ petition is admitted and in which the petitioner society made a statement that Shri Vikram Shankarlal Patel shall not evicted, from the premises illegally and in view of the said statement made by the ld. counsel of the society, an interim order was passed and, thus, ad interim relief granted by this court was confirmed and the order of status-quo was granted with a liberty to raise all the contentions before the civil court.

5. Thus, it is evident from the aforesaid facts that the resolution passed by the society dated 24.9.1995 whereby the membership of the petitioner was brought to an end (page 40 of the petitioner). The said resolution was once cancelled by the District Registrar, then the said resolution was upheld by the Registrar (Appeals) and again in revision, the State of Gujarat has quashed and set aside the resolution of the society by order dated 18.8.2000 and against revisional order, the petition bearing SCA No. 10755/2000 is pending. The ownership for want of payment of the disputed amount is still in disputed. The petitioner has obtained the electric connection from the respondent no. 1 since 1996 and till today.

6. Looking to the aforesaid facts and circumstances of the case, the petitioner who is enjoying the electric connection from 1996 without any disturbance either from AEC or from the society and especially the fact that the ownership of the petitioner is at belligerent stage, it is not worthwhile to take away the connection of electricity given by the respondent no. 1. Looking to the communication at Annexure-F dated 6.11.1996 by the respondent no. 1, now, the order of the revisional authority is in favour of the petitioner, the respondent no. 1 is , therefore, directed to decide the said communication which is in form of notice dated 6.11.1996 keeping in mind the aforesaid development of the present case. The petitioner is directed to reply the said notice with all the documentary evidence upon which he is

relying within a period of four weeks from the date of receipt of the certified copy of this order and respondent no. 1 shall decide within four months thereafter. The respondent shall decide the notice dated 6.11.1996 keeping in mind the documentary evidence produced and upon giving a personal hearing to the petitioner and the society and keeping in mind the existing law within a stipulated period, as referred to hereinabove. Till the notice dated 6.11.1996 is decided by respondent no. 1 and communicated to the petitioner, the status-quo as to the electricity connection shall continue. If any adverse decision is taken, then the status-quo shall continue for a further period of 4 weeks thereafter.

7. With this observation, this petition is disposed of. Rule is made absolute to the aforesaid extent only. Interim relief stands vacated. No order as to costs.

(D.N. PATEL, J.)

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